9-25-2014

Arnold v. City of Stanley Appellant's Reply Brief Dckt. 41600

IN THE SUPREME COURT OF THE STATE OF IDAHO

THOMAS ARNOLD and REBECCA ARNOLD, Plaintiffs-Appellants, v. CITY OF STANLEY, a municipal subdivision of the State of Idaho, Defendant-Respondent.	Supreme Court Docket No. 41600-2013 Custer County No. 2012-142

APPELLANTS' REPLY BRIEF

Appeal from the District Court of the Seventh Judicial District of the State of Idaho
in and for the County of Custer
District Case No. 2012-142

The Honorable Joel E. Tingey, District Judge, presiding.

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I. INTRODUCTION

By the Respondent's Brief in this matter, it is apparent that the City of Stanley ("City") has a rather cavalier attitude about its responsibilities under the Idaho Open Meeting Law, Idaho Code §§ 67-2340 through 67-2347. Indeed, at no point throughout the Respondent's Brief does the City actually contest the central fact of this case: the City Council meeting at which Ordinance 189 was passed was convened approximately a full half-hour prior to the time noticed under Idaho Code § 67-2343. The City actually concedes this fact: "That the hearings/deliberations began early is not at issue." (Respondent's Brief, p. 6.) 'Not at issue,' the Arnolds' submit, is the City's way of attempting to distract this Court away from the fact that there is no dispute here that there was a violation of the Idaho Open Meeting Law. The City does not appear to be bothered by, or at all apologetic for, its own disregard for its legal obligations to its citizenry.

The facts, then, are exactly as set forth in Appellant's Opening Brief:

> On August 9, 2012 at 5:31 p.m., approximately twenty-nine (29) minutes before the scheduled time for the City Council Meeting, the Mayor of the City convened a City Council meeting to make decisions and/or to deliberate toward decisions, including a decision and/or deliberation on Ordinance No. 189 (the "5:31 p.m. Meeting"). (R. at 34, 36 (¶ 14).) The City had not provided any meeting notice or agenda notice for a City Council meeting to be held on August 9, 2012 at 5:31 p.m. (R. at 34, 37 (¶ 15).) Though the City posted a meeting notice and agenda notice for a regular City Council meeting to be held on August 9, 2012 at 6:00 p.m., such notice did not notify interested parties of a meeting that actually started at 5:31 p.m. (R. at 34, 37 (¶ 16), 54 (Ex. E).) The City did not amend the agenda that the City used at the 5:31 p.m. Meeting. The City proceeded to then hear matters that were not on the agenda for the City Council meeting scheduled for 6:00 p.m.

> (R. at 34, 37 (¶ 16), 54 (Ex. F).) At the 5:31 p.m. Meeting, among other actions, the City enacted Ordinance No. 189, which Ordinance adversely affects Plaintiffs' rights with respect to the Property. (R. at 34, 37 (¶ 17), 75 (Ex. G).) All of the starting and ending times of the various hearings and meetings relevant hereto are noted in the Official Minutes of the August 9, 2012 proceedings, meaning there is can be no dispute that the facts material to this case evidence a failure by the City of Stanley to comply with its own published notices and agendas for those proceedings, and therefore no dispute that the City's actions did in fact violate Idaho's Open Meeting Law. (*See* R. at 34, 37 (¶ 16), 54 (Ex. F).)

(Appellant's Opening Brief, pp. 3-4.)

In view of the foregoing, admitted violation of the Idaho Open Meeting Law, and pursuant to the plain language of Idaho Code § 67-2347(1), the action taken during the City Council meeting on August 9, 2012 "shall be null and void":

> If an action, or any deliberation or decision[-]making that leads to an action, occurs at any meeting which fails to comply with the provisions of sections 67-2340 through 67-2346, Idaho Code, such action ***shall be null and void***.

Idaho Code § 67-2347(1) (emphasis added). The Legislature has therefore enacted an unequivocally broad protective statute for the people of Idaho, to protect against the very sort of cavalier abuse of power that the City has seemingly boasted about in this matter. Rather than acknowledge that the Idaho Legislature provided statutory standing to the broad class of people who may – in any number of ways – be "*affected by*" a violation of the Open Meeting Law, the City has engaged in gamesmanship regarding the meaning of "affected by," urging a result that will open a floodgates' worth of opportunity for it to willfully, albeit carefully, shirk its responsibilities to the people of the City of Stanley.

By ignoring the somewhat obvious fact that one can be "affected by" something in a multitude of ways, and instead narrowing the class of persons "affected by" a violation to that class which best fits the exigencies of this litigation, the City was forced to ignore the plain language of the statute. The City states: "Arnold asserts that the two words: 'affected by' should be extended to any property owner dissatisfied or 'actually affected' by the underlying substantive result; the text of the zoning ordinance. This virtually throws open the courthouse doors." (Respondent's Brief, p. 8.) If it is true that such an interpretation "throws open the courthouse doors," the City's quarrel on this point is not with the Arnolds, but with the Idaho Legislature. The plain and unambiguous language of the Open Meeting Law states:

> Any suit brought for the purpose of having an action declared or determined to be null and void pursuant to subsection (1) of this section shall be commenced within thirty (30) days of the time of the decision **or action that results**, in whole or in part, from a meeting that failed to comply with the provisions of this act.

Idaho Code § 67-2347(6). Moreover, and perhaps more fundamentally, the City's grave prediction that the "courthouse doors" will be "throw[n] open" is only true if, and only if, governmental entities like the City of Stanley decide not to comply with the rather simple requirements of the Open Meeting Law. If the City complies with its straightforward obligations under the law, there really is no problem. It seems, then, that the Legislature's purpose and the goal of the Open Meeting law is actually accomplished – not thwarted – by the interpretation that the City would now like to avoid. If compliance with the law is too difficult for the City Officials, then the problem seems to be internal, and not of the Arnolds' making.

Further on the facts of this case, it remains undisputed by the City that Ordinance 189 – an "action that result[ed]" from the meeting that was held in violation of the Open Meeting Law – directly affects the Arnolds' property. In turn, Mr. and Mrs. Arnold were unequivocally *affected by* that action, by and through their property rights, and have statutory standing based on the plain language of Idaho Code § 67-2347(6). Therefore, the Arnolds properly filed suit within the thirty (30) day time period required by Idaho Code § 67-2347. (R. at p. 8.) It is, of course, on this point that this Appeal turns.

Despite its bald reference to "the considerable case precedent governing the law of standing," the City has failed to cite even a single relevant case where the issue at hand was, as here, based on statutorily-conferred standing rather than the more limited Article III standing. (*See* Respondent's Brief, p. 9, n. 22 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).) In point of fact, the City has failed to articulate a cogent legal argument that takes into account (and fulfills) either the plain language or the intent of the Idaho Open Meeting Law. As the City has acknowledged, "where statutory language is unambiguous, . . . other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature." (Respondent's Brief, p. 6 (citing *Verska v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011)).) Because it is undisputed that the Arnolds, by and through their affected property rights, were *affected by* the action taken by the City Council at the meeting held in violation of the requirements of the Idaho Open Meeting Law, the plain language of Idaho Code § 67-2347(6) unambiguously confers standing upon them to challenge that action, and the District Court's decision otherwise should be reversed.

II. ARGUMENT

The City's advances only two arguments in favor of upholding the District Court's decision, both of which are flawed as a matter of law. First, the City asks this Court to ignore the plain intent of the Idaho Legislature to allow broad access to the courts for any person who is affected by a violation of the Open Meeting Law, in favor of the more burdensome test for Article III standing. Second, the City argues that an Open Meeting Law challenge is not the appropriate means to challenge Ordinance 189, as the Arnolds have the ability to make a substantive challenge to the Ordinance by way of other means (takings action, declaratory judgment action).[1] The Arnolds will address these arguments in turn.

A. The City's Reliance On Principles Of Article III Standing Is Flawed.

As noted in the Opening Brief in this Appeal, the District Court seemed to recognize, by not addressing Article III and instead focusing on the relevant language of Idaho's Open Meeting Law, that where a relevant statute specifically confers standing upon a certain class of people to challenge conduct or action, that statute supersedes the otherwise-typical standing analysis under Article III of the United States Constitution. (R. at 182-183.) The District Court did not accept the City's invitation to analyze the Arnolds' case from an Article III perspective (*Id.*), and the Arnolds respectfully contend that this Court should similarly reject that approach.

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[1] While it is true that there may be other means by which the Arnolds could challenge Ordinance 189, it is fallacious to suggest that the existence of those other means necessarily precludes the operation of an Open Meeting Law challenge.

Though Idaho Courts have not addressed the specific issue at hand, the Nevada Supreme Court, in addressing standing under that sister state's Open Meeting laws, previously has. Addressing a challenge to the plaintiff's standing based on traditional, Article III standing requirements (as argued here by the City), in the context of rights conferred by a specific state statute (as argued here by the Plaintiffs), the Nevada court articulated the proper and most logical standing requirements: "State courts are free to adopt a 'case or controversy' justiciability requirement [*or open their courts to lawsuits that may not meet this requirement.*]" *Stockmeier v. Nevada Dept. of Corrections Psychological Review Panel*, 122 Nev. 385, 393, 135 P.3d 220, 225 (Nev. 2006). Rejecting the argument that Article III standing must be shown in *every* case, regardless of legislative intent, the Nevada Court rightly and fairly determined that "where the Legislature has provided the people of Nevada with certain statutory rights, we have not required constitutional standing to assert such rights but instead have examined the language of the statute itself to determine whether the plaintiff has standing to sue." *Id.* at 226. "To do otherwise would be to bar the people of Nevada from seeking recourse in state courts whenever the Legislature has provided statutory rights that are broader than constitutional standing would allow." *Id. See also Rabin v. Bartlesville Redevelopment Trust Auth.*, 2013 OK CIV APP 72, 308 P.3d 191, 193 (Okla. Civ. App. 2013) (where a plaintiff can "rely on a statute or constitutional provision to authorize invoking the judicial process," it need not meet the typical requirements of the standing test). In *Stockmeier*, the Nevada Supreme Court was faced with the application of Nevada's Open Meeting laws that conferred a right to file a civil action on "[a]ny person denied a right conferred by [Nevada Revised Statutes Chapter 241]." *Id.* The circumstances in the present case

are synonymous, and this Court should respectfully reach the same decision, granting the same deference to the Legislature, as the Nevada court did in *Stockmeier*.

In support of its contention that the Arnolds do not have standing, the City asserts that both *Lujan v. Defenders of Wildlife* and *Halvorson v. North Latah County Highway District* 151 Idaho 196, 204, 254 P.3d 497, 505 (2011) ought to provide the test in this case for whether the Arnolds have standing. (Respondent's Brief, p. 9.) In so doing, the City necessarily ignores the plain language of the relevant statute, even after asserting that the plain language of the statute ought to govern (*Id.* at pp. 5-6), instead drawing on the test for standing and procedural due process in cases where there is no direct statute speaking to those issues. The City does not cite a single case in which there is a statute directly on point, as here, but where this Court nevertheless ignored the intent of the legislature in the plain language of that statute and instead applied the Article III test for determining a party's standing.

Though it appears that the City disfavors a statutory scheme that permits *any* affected person from bringing a lawsuit – a standard that notably does not "open the courthouse doors" for a lawsuit by simply any person who cannot establish how he is affected – the policy discussion that underlies the City's argument is not appropriately had in this Court. *See Stringer v. Robinson*, 155 Idaho 554, 314 P.3d 609, 613 (Nov. 27, 2013) (citing *Grazer v. Jones*, 154 Idaho 58, 66, 294 P.3d 184, 192 (2013) ("We decline to do violence to the plain language of Idaho Code § 5–215 in the name of uniformity. . . . [W]e are not at liberty to depart from the plain meaning of a statute for policy reasons.")); *Verska*, 151 Idaho at 895 (the Courts "must follow the law as written. If it is socially or economically unsound, the power to correct it is

legislative, not judicial." (Citing *Herndon v. West*, 87 Idaho 335, 393 P.2d 35 (1964))). If the City does not like the breadth with which the statute was written, it must address those concerns before the Legislature.

B. The Fact That The Arnolds' Substantive Property Rights Were Affected By Ordinance 189 Is Sufficient To Establish Standing Under Idaho Code § 67-2347(6).

The City's second argument for affirming the District Court's denial of standing to the Arnolds, in actuality, has nothing to do with the doctrine of standing. Rather, the City pivots away from the standing issue to the entirely separate and distinct legal concept of procedural due process. (Respondent's Brief, p. 10.) The second argument, therefore, has nothing to do with the decision actually made by the District Court and appears instead to be an appeal to this Court to find an alternate means to excuse its admitted violations of the Idaho Open Meeting Law. However, as evidenced by the case law cited by the City in its own brief, the legal concepts of standing and procedural due process are separate and do not always align. For purposes of this Appeal, concerning only whether the District Court properly found that the Arnolds lacked standing, the City's diversion to principles of procedural due process is misplaced.[2]

More importantly, however, is the fact that the Idaho Legislature, in drafting the Idaho Open Meeting Law and as noted in the previous section, clearly and unequivocally set forth its

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[2] *See Ciszek v. Kootenai County*, 151 Idaho 123, 254 P.3d 24 (2011) (*cited in* Respondent's Brief, p. 10, n. 23.) In *Ciszek*, this Court found that the Appellants did have standing to bring their action, but held in a separate section under a different analysis that there was no procedural due process violation according to the facts specific to that case. 151 Idaho at 128-130. Here, the only relevant inquiry is whether the Arnolds had standing. By the applicable standard set forth in Idaho Code § 67-2347, it is plain that they do.

intent to allow greater access to the courts by citizens *affected by* actions of their local and state governmental entities.

> A procedural due process inquiry is focused on determining whether the procedure employed is fair. The due process clause of the Fourteenth Amendment "prohibits deprivation of life, liberty, or property without 'fundamental fairness' through governmental conduct that offends the community's sense of justice, decency and fair play." *Maresh v. State of Idaho Dep't of Health and Welfare,* 132 Idaho 221, 225–26, 970 P.2d 14, 19–20 (1998) *citing Moran v. Burbine,* 475 U.S. 412, 432–34, 106 S.Ct. 1135, 1146–47, 89 L.Ed.2d 410, 428–29 (1986). Procedural due process is the aspect of due process relating to the minimal requirements of notice and a hearing if the deprivation of a significant life, liberty, or property interest may occur.

Bradbury v. Idaho Judicial Council, 136 Idaho 63, 72, 28 P.3d 1006, 1015 (2001). With respect to the Idaho Open Meeting Law, the Idaho Legislature has legislatively codified guidance as to certain aspects of what "governmental conduct that offends the community's sense of justice, decency and fair play." Thus, when the government does not deny violating the Open Meeting Law, as here, concerns of procedural due process are a foregone conclusion. The only issue to be addressed in this Appeal is whether the Arnolds are among the class of people legislatively selected to enforce these standards. The rest, whether in terms of procedural due process or otherwise, is of no moment.

The City's position in this second argument really demonstrates its willful disregard for its statutory obligations under the Idaho Open Meeting Law. Essentially, still without denying that it did not follow the requirements and procedures that are clearly set forth in the Open Meeting Law, the City asserts that the Arnolds should pursue, instead, a substantive challenge to

Ordinance 189 by way of a "takings action or declaratory judgment action." (Respondent's Brief, p. 10.) In other words, the City would have this Court insulate its seemingly-admitted violations of the Idaho Open Meetings Law by requiring affected plaintiffs (after all, they would not have the ability to pursue such claims if they were not *affected by* the action) to pursue extensive and costly litigation, requiring a slate of land use experts, economists, and other aspects of expensive and time-consuming litigation, rather than the simple and straightforward process and remedy *actually* prescribed by the Idaho Legislature for straightforward violations of the Idaho Open Meeting Law. It is, to borrow a phrase, the epitome of getting to Seattle by way of New York. The City's argument in this respect demonstrates the disingenuousness of its earlier-stated concern for policy considerations that would "throw[] open the courthouse doors": The City is not concerned about judicial efficiency or economy; it merely desires a rubber stamp to be able to violate the Open Meeting Law at will, without ensuring the available redress for its citizens that the Idaho Legislature has clearly, unambiguously, and broadly allowed.

Moreover, the only other case law cited by the City to support its contention, that the Arnolds have not pursued the appropriate means to challenge its violation, does not support such a conclusion. To resist the Arnolds' efforts to hold the City accountable to the standards expressly and unequivocally set forth in the Idaho Open Meeting laws, the City relies on *Cowan v. Board of Commissioners of Fremont County*, 143 Idaho 501, 148 P.3d 1247 (2006). (Respondent's Brief, p. 10, n. 23.) The City relies on *Cowan* for the proposition that, absent a showing of prejudice to a substantial right, a defective notice does not alone give rise to a cause

of action. The City's reliance on *Cowan* is misguided and, in fact, *Cowan* provides the key persuasive authority for why the Arnolds' claims herein are appropriate.

First, this Court in *Cowan* was not confronted with nor did it decide any question of compliance with the Idaho Open Meeting Laws. In fact, the Idaho Open Meeting laws (and the code sections relevant thereto) are not once mentioned in the entirety of the *Cowan* opinion. Consequently, there is no discussion in *Cowan* about the prerequisites for a civil action to have governmental action declared null and void under the Open Meeting laws, specifically the standing requirements of an aggrieved party. Rather, the portion of *Cowan* relied upon by the City is limited to a discussion about standing under the Fremont County Development Code ("FCDC"). Not surprisingly, the FCDC does not contain the same or any similar language as the Open Meeting laws, permitting any "affected" person to bring an action for enforcement of proper notice requirements. With respect to the portion of *Cowan* relied upon by the City, then, it is of no use to this Court in determining whether these Plaintiffs may bring a civil action to "requir[e] compliance with the provisions of [the] act." Idaho Code. § 67-2347(6).

However, though the portion of *Cowan* relied upon by the City offers neither binding nor persuasive authority on the limited question presented in this Appeal, an earlier section of this Court's decision in *Cowan* is helpful. Before the discussion regarding the propriety of the plaintiff's cause of action under the FCDC, this Court addressed the question of "standing" under a legislative scheme more closely analogous to the Idaho Open Meeting laws. Analyzing the Local Land Use Planning Act ("LLUPA"), the Supreme Court noted that the legislature provided for a cause of action by any "affected person to seek judicial review of an approval or denial of a

land use application . . . ." *Cowan*, 143 Idaho at 508 (citing Idaho Code § 67-6521(1)(d)). The "*affected person*" language of LLUPA is synonymous with the language of the Idaho Open Meeting laws, referring to any "*person affected by*" and, the Arnolds contend, provides the closest available comparison for purposes of precedential value.

In the examination of the "affected person" standard under LLUPA, this Court in *Cowan* was presented with the exact same arguments now asserted by the City in the instant Appeal: "The Board argues that Cowan has failed to allege a distinct palpable injury or particularized harm he has suffered, but has instead only alleged generalized grievances." 143 Idaho at 509. The plaintiff, *exactly* as the Arnolds have alleged in this action, countered that his "land will be adversely affected" by "adversely impact[ing] his property rights and diminish[ing] his property value." *Id.* This Court proceeded to reject the Board's argument and found, under the "affected person" standard of LLUPA, that Cowan unquestionably "has standing to pursue his claims" based on the adverse impacts on Cowan's property, as alleged.

The analysis is the same here as in *Cowan*. The District Court did not decide the issue of whether the Arnolds' property rights were adversely affected by Ordinance 189. (R. at pp. 182-183.) Rather, the District Court narrowly interpreted the phrase "affected by", per the City's suggestion, to only those persons who were affected by the violation in only one of a multitude of possible ways (*i.e.* those who were unable to be present at the City Council meeting due to the deficient notice). However, as this Court found in *Cowan*, a person may be affected by a violation of a statute in many ways, including and especially by a deprivation of private property rights by governmental action taken in violation of the Open Meeting Law.

III. CONCLUSION

The broad language of the Idaho Open Meeting Law is clearly designed to prevent governmental abuses and to ensure that – in every case – local and state governments operate in open, fair, and accessible terms. By the plain language of the Open Meeting Law, the Idaho Legislature conferred an enforcement power upon the people whose rights are affected by violations and abuses of the government's powers, so that the government will at all times remain a tool of the people and for the people, and not above the people. In this case, the City has no excuse or explanation as to why it did not follow the plain and simplistic requirements of the Open Meeting Law, nor any justification as to why it should not be held accountable for its violations.

Rather, the City seeks to have this Court affirm the decision of the District Court, effectively disarming the people from their right and ability to keep the government in check. The City has provided no viable legal argument for doing so, nor has it provided any controlling or persuasive authority as to why the Arnolds – unquestionably affected by Ordinance 189 – should not have that right. By the plain language of Idaho Code § 67-2347(6), the Arnolds are persons "affected by" the City's violation of the Open Meeting Laws, and therefore had standing to bring this action. The Arnolds respectfully request that this Court reverse the District Court's grant of summary judgment in favor of the City, and remand these proceedings back to the District Court for further proceedings consistent with such a decision.

IV. ATTORNEY FEES

The City has requested an award of attorney fees against the Arnolds, suggesting that the Arnolds' Appeal has been made "without a reasonable basis in fact or law." (Respondent's Brief, p. 11 (citing Idaho Code § 12-117).) Notwithstanding the fact that the Arnolds do not believe that the City should prevail in this Appeal, which would render moot the City's request for attorney fees, the Arnolds hereby respond to the City's request.

In support of its request, the City cites to the "plethora of case law" that supports its contentions (Respondent's Brief, p. 11), even though it only cited five cases in the portions of its Brief discussing the substantive merits of the "standing" issue actually relevant to this Appeal, and only one of which (*Cowan*) actually addressed the question of statutory standing as opposed to Article III standing or some other unrelated and irrelevant issue (e.g. procedural due process). Even then, the one relevant case that it cited, *Cowan*, included a determination by this Court that the plaintiff therein did, in fact, have statutory standing.

The fact of the matter is that the scope of persons statutorily conferred standing to enforce the Idaho Open Meeting Law is a question that has never before been addressed by this Court. Where matters of first impression are involved, this Court has often declined to award fees to the prevailing party. *See St. Luke's Magic Valley Reg'l Med. Ctr., Ltd. v. Bd. of Cnty. Comm'rs of Gooding Cnty.*, 149 Idaho 584, 591, 237 P.3d 1210, 1217 (2010); *Smith v. Idaho Dep't of Labor*, 148 Idaho 72, 76, 218 P.3d 1133, 1137 (2009); *Saint Alphonsus Reg'l Med. Ctr. v. Ada Cnty.*, 146 Idaho 862, 863, 204 P.3d 502, 503 (2009). Moreover, as the City has focused its argument against the Arnolds' standing on the requirements of Article III standing, which

other state courts have disagreed with when the applicable open meeting law suggests a broader class of individuals who have standing, the Arnolds have not appealed without a reasonable basis in fact and law under Idaho's Open Meeting Law. *See Smith*, 148 Idaho at 76. It is further telling that, with the exception of the Cowan case that actually favors the Arnolds' position, the City has abandoned all of the case law on which it previously relied and which has been addressed in Appellants' Opening Brief. The only issue that actually lacks a basis in fact or law here is the notion that this Court should abandon the clear and unambiguous statutory standing conferred by the Idaho legislature, in favor of a more narrow reading that protects the City against accountability for its own, acknowledged violations of the law.

The Arnolds' appeal is consistent with the purpose and intent of the Idaho Open Meeting Law, as well as the letter of the law. The City has not denied that it simply failed to abide by the provisions of that law, and is therefore attempting to evade review by challenging the Arnolds' standing despite the broad language employed by the Idaho Legislature. Yet, in a bit of irony, it is the City that accuses the Arnolds of "false pretenses." (Respondent's Brief, p. 11.) The City did not follow the Open Meeting Law in passing Ordinance 189, and the Arnolds are property owners directly affected by Ordinance 189. This appeal is grounded in those facts, and supported directly by the plain language of Idaho Code § 67-2347(6), which emphasizes both the government's decision and the action that results therefrom. Standing for the Arnolds is further buttressed by the very case law upon which the City has relied most consistently throughout these proceedings, *Cowan*, even though the City continues to ignore the relevant section of that decision that speaks to statutory standing.

On the foregoing bases, in addition to and separately from the Arnolds' request that this Court reverse the District Court's decision and remand this case, the Arnolds respectfully request that this Court deny the City's request for Attorney Fees.

RESPECTFULLY SUBMITTED this 25th day of September, 2014.

Greener Burke Shoemaker Oberrecht PA

By _____
Fredric V. Shoemaker
Thomas J. Lloyd III
Attorneys for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of September, 2014, a true and correct copy of the within and foregoing instrument was served upon:

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